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**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR-IV

ON THE 18th OF MARCH, 2024

MISC. PETITION No. 2015 of 2022

BETWEEN:-

1. **BAIYANT SINGH S/O MANJEET SINGH, AGED 16 YEARS**
2. **HARDEEP SINGH S/O SHRI MANJEET SINGH, AGED 11 YEARS,**
3. **SUKHPREET KAUR D/O SHRI MANJEET SINGH, AGED 14 YEARS, THROUGH LEGAL GUARDIAN SHRI MANJEET SINGH S/O SHRI ANOOP SINGH, AGED 50 YEARS, R/O VILLAGE BABUPUR, MUHAL TEHSIL AND DISTRICT ASHOKNAGAR, PRESENTLY RESIDING AT VILLAGE MOHANA, DISTRICT GWALIOR (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI YASH SHARMA - ADVOCATE)

AND

PARAMJEET KAUR D/O LATE SHRI TRILOK SINGH, W/O SHRI NISHAT SINGH, R/O VILLAGE HAJUKHEDI TEHSIL MUNGAWALI, DISTRICT ASHOKNAGAR (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI ABHISHEK SINGH BHADORIYA - ADVOCATE WITH SHRI MADHUR BHARGAVA - ADVOCATE)

.....
This petition coming on for admission this day, the court passed the following:

ORDER

Challenge is made to the orders dated 12.01.2022 and 10.03.2022 passed by Additional Commissioner, Gwalior in case No. 1020/2020-21/Appeal and

Case No.45/2021-22/Review, order dated 18.02.2021 passed by Sub-Divisional Officer (Revenue), Ashoknagar in Case No.05/Appeal/2020-21 and order dated 16.06.2020 passed by Tahsildar, Ashoknagar in Case No. 0080/A-6/2020-21.

2. It appears that an application under Sections 109, 110 of MPLRC was filed by the respondent-Paramjeet before the Tehsildar, Ashoknagar seeking mutation of her name in the revenue record on the basis of Will of Trilok Singh. The Tehsildar adjudicated the Will and found it to be genuine and passed an order dated 16.06.2020 (Annexure P-1) directing the authorities to record the name of applicant. Thereafter, the petitioners preferred an appeal before the SDO, which too has been dismissed vide order dated 18.02.2021 (Annexure P-2) on merits. Aggrieved by the order dated 18.02.2021 passed by the SDO, petitioners preferred an appeal before the Additional Commissioner, which has been dismissed vide order dated 12.01.2022 (Annexure P-3). Thereafter, petitioners preferred a review petition before the Additional Commissioner, which too has been dismissed vide order dated 10.03.2022 (Annexure P-4). Annexures P-1 to P-4 are under challenge in the present petition.

3. Plaintiff/Respondent filed a civil suit No. RCSA/105/20 before the Court below seeking injunction that the Defendants/petitioners be restrained from interfering in the possession. Surprisingly, in the entire plaint, the respondent has not disclosed about the Will of Triok Singh in her favour. The civil suit was contested by the petitioners herein and the application under Order 39 Rule 1 and 2 of CPC filed by the plaintiff and defendants both. Both were allowed by the Trial Court restraining the defendants/petitioners from interfering in the peaceful possession and restraining the plaintiff/respondent to alienate the property.

4. Heard learned counsel for parties at length and perused the record.

5. Admittedly, property was recorded in the name of one Trilok Singh, who died leaving behind him three daughters. It is alleged that during lifetime of Trilok Singh, he executed a registered Will in favour of respondent. It is not the Revenue Court but it is for the Civil Court that has right to decide whether a Will was executed or not, whether it is right or wrong.

6. The moot question for consideration is as to whether the revenue authorities have jurisdiction to mutate the name of a beneficiary on the basis of Will or not?

7. The question is no more *res integra*.

8. The Supreme Court in the case of **Jitendra Singh v. State of Madhya Pradesh** by order dated **06.09.2021** passed in SLP (civil) No.13146/2021 has held as under:

“6. Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter.

6.1 In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only “fiscal purpose”, i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has

been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faqrudin v. Tajuddin (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70.”

9. This Court in the case of Dharamveer Singh and Others vs. Rushtum Singh and Others, by order dated 27/08/2019 passed in MP No. 3281 of 2019 has held as under:-

"The Punjab and Haryana High Court in the case of Rajinder Singh And Another Vs. Financial Commissioner as decided on 21st March, 2013 in Civil Writ Petition No.3821/2011 has held that validity of "Will" can be decided by the Civil Court which has exclusive domain over such matter and this cannot be decided by the Revenue Courts. Heard the Learned Counsel for the parties. A similar view has been taken by a Coordinate Bench of this Court by order dated 06/04/2017 passed in Writ Petition No.1820 of 2011 (Akshay Kumar vs. Smt. Ramrati Pandey and Ors.). Thus, it is held that the Revenue Courts have no jurisdiction to decide the rights of any party on the basis of "Will" and if somebody wants to claim his/her title over any property, then he/she has to seek declaration from the Civil Court of competent jurisdiction. Accordingly, this Court is of the considered opinion that the Additional Commissioner, Gwalior Division, Gwalior has committed material illegality by restoring back the order passed by Tahsildar, by which the names of the respondents were mutated on the basis of "Will" executed by one Sughar Singh." Accordingly, order dated 25/04/2019 passed by Additional Commissioner, Gwalior Division, Gwalior in Case No.176/2017-18/

Appeal is hereby set aside, and the order passed by SDO, Gwalior City, District Gwalior in Case No.23/2016-17/Appeal is hereby restored. The application filed by the respondents under Section 109 and 110 of MP Land Revenue Code is hereby rejected. The respondents are granted liberty that if they so desire, then they can seek declaration from the Civil Court of Competent jurisdiction. With aforesaid observations, this petition is allowed. "

10. A similar view has been taken by this Court in the case of Kalyan Singh vs. Gangotri Bai and Another, by order dated 21/08/2019 passed in MP No.3460 of 2019.

11. Thus, it is well-established principle of law that the revenue authorities have no jurisdiction to decide the genuineness of the "Will" and it is only for the Civil Court to decide that whether the "Will" was executed or not ?

12. Thus, it is clear that if the beneficiary wants to take advantage of a Will, then he has to seek crystallise his right from the Civil Court of competent jurisdiction and the revenue authorities have no jurisdiction to mutate the name on the basis of Will.

13. It is made clear that the mutation of legal representatives of deceased shall be subject to the outcome of the Civil Suit, filed by the respondent.

14. It is also made clear that since the revenue authorities have no jurisdiction to mutate the name of a beneficiary on the basis of Will, therefore any finding given by the revenue authority with regard to the genuineness of the Will shall not prejudice or influence the mind of the Civil Court and Civil Court shall decide the question of Will strictly in accordance with law.

15. Accordingly, order passed by Tahsildar dated 16.06.2020, SDO dated 18.02.2021 and Additional Commissioner dated 12.01.2022 as well as

Review order dated 10.03.2022 are hereby set aside.

16. With the aforesaid observations, this petition is finally disposed of.

**(RAJENDRA KUMAR-IV)
JUDGE**

Abhi

